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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

CABLE SERVICES

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October 13, 1994

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Meredith Jones  
Bureau Chief  
Cable Services Bureau  
Federal Communications Commission  
Washington, D.C. 20554

Dear Ms. Jones:

The Video Jukebox Network, Inc. ("VJN") files these views regarding the press reports outlining the FCC's proposed incentives for cable operators to add channels to regulated tiers of programming service.

Video Jukebox Network, Inc. is a public company that operates THE BOX, an interactive, all-music network, that serves five million cable homes and 15 million homes through broadcast and satellite.

We understand that in your "going forward" proposals, the FCC is considering not only an annual cap on monthly license fee and markup passthroughs, but a provision which would limit the aggregate markup an operator can realize from adding new programming (i.e., "the cap within the cap").

I am writing on behalf of VJN to voice opposition to this provision, as it is our deep-felt opinion that networks that charge small or no license fees are impacted very negatively by it and, more importantly, such a measure would not serve the consumers' best interests or honor the tenets of a free market economy.

Unlike most of our competitors, we charge cable operators no license fees for carriage. This is possible because we run our business on transactional revenue generated from orders of music videos which play on our network and on national advertising revenue. In fact, we pay operators a share of transactional revenues, on average 3-4 cents per subscriber each month.

VJN also differs in other important ways from other new program channels. To provide the service to cable systems requires our interactivity that is very expensive to deploy. It is made possible by extensive headend equipment, which costs roughly \$40,000 a unit to purchase and install in a cable system. What it does is magic. Unlike anything else on television, our viewers are able to choose the programming that airs on their cable systems. We are 100% locally programmed and all cable subscribers taking the tier on

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which VJN is located have the benefit of the music whether or not they order any particular music.

We feel the proposed "cap within the cap" will discriminate against new networks that charge small or no license fees, because once an operator uses up all his available margin, there is insufficient financial incentive to launch additional no cost or low cost services in a given year. Further, the services most likely to be added to regulated tiers are those that are the expensive, best known services, but not necessarily the best services.

The winners in all of this are the license-fee-based, fully distributed cable networks. These are the same networks that are benefiting from the Commission's opposition to the migration of established cable networks from their entrenched positions on regulated tiers. Many of these networks are seizing the opportunity to launch companion services and use their reach to go directly to the consumer to promote these services and to galvanize their viewers to vocalize their interest in these new services to their cable operators. Discovery is doing this with The Learning Channel, USA - Sci Fi, A&E - History, Family - The Cable Health Club, Turner - Classic Movies and Cartoon, The Nashville Network - Country Music Television, ESPN - ESPN2, etc.

While these new networks may be fine services, we feel that by legislating security for imbedded networks on regulated tiers, small unestablished networks like THE BOX can't approach cable operators to switchout underperforming networks. This limits competition and the consumer loses. The "cap within the cap" just further aggravates the problem for services, such as VJN; which seek to compete on the basis of innovative programming and no cost to the cable operator.

Further, "the cap within the cap" doesn't serve consumer interests, because more programming can be added to a regulated tier if you allow the cable operator to maximize programming value within the passthrough limits. Competition will drive license fees down and cable networks will be forced to deliver higher quality programming to capture larger audiences to build up their national advertising businesses. The smaller the aggregate license fee paid by the cable operator, the more programming the consumer will receive for the same rate on a regulated tier. Do not assume that no cost or low cost services to the operator are less desirable.

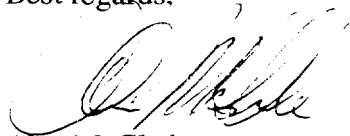
In its first round of rule-making, the Commission defined a cable network as "satellite-delivered" for the purpose of calculating new rates under the rollback. Because THE BOX is an interactive service delivered at the headend, this forced us to launch a satellite feed to attain the status of "satellite delivered" or face extinction. Cable operators would have been forced to drop us out of the necessity to maximize their rates. We did what we had to to stay alive, at an annual cost of over \$2 million per year. VJN has paid \$200,000 a month for the last 13 months awaiting the FCC's decision on adding new channels. We have not added more than a handful of new systems since no operator would make a commitment in this continuing period of regulatory uncertainty.

Now, we are facing a similar situation with the "cap within a cap." We are asking you to let the marketplace determine which networks win berths on regulated tiers, and to give us the opportunity to compete fairly.

On a final note, we urge the FCC to (1) preempt all affirmative marketing requirements, and (2) to reject placing an operator's entire rate back into play each time new channels are added to regulated tiers.

Thank you for your consideration of our views. Please feel free to call me should you have any questions.

Best regards,

A handwritten signature in dark ink, appearing to read "A. McGlade", written over a horizontal line.

Alan McGlade  
Chief Executive Officer

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